

Brussels, 21 December 2016  
Case No: 79867  
Document No: 831197

EFTA SURVEILLANCE  
AUTHORITY

*Póst- og Fjarskiptastofnun*  
Sudurlandsbraut 4  
108 Reykjavík,  
Iceland

For the attention of:  
Mr. Hrafnkell V. Gíslason  
Managing Director

Dear Mr Gíslason,

**Subject: Wholesale market for call termination in public telephone networks provided at a fixed location in Iceland**

**Comments pursuant to Article 7(3) of Directive 2002/21/EC (Framework Directive)<sup>1</sup>**

## **I. Procedure**

On 22 November 2016, the EFTA Surveillance Authority (“the Authority”) received a notification of a draft national measure in the field of electronic communications pursuant to Article 7 of the Framework Directive from the Icelandic national regulatory authority, *Póst- og Fjarskiptastofnun* (“the PTA”), concerning the wholesale market for call termination in public telephone networks provided at a fixed location in Iceland<sup>2</sup>.

The notification became effective on the same day.

National consultation was carried out, pursuant to Article 6 of the Framework Directive, during the period 10 October to 10 November 2016.

On 5 December 2016, the Authority sent a request for information to the PTA (Doc No. 829249), to which a reply was received on 8 December 2016 (Doc No. 830390).

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<sup>1</sup> Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services, OJ L 108, 24.4.2002, p. 33 (as amended by Regulation (EC) No 717/2007, OJ L 171, 29.6.2007, p. 32 and Regulation (EC) No 544/2009, OJ L 167, 29.6.2009, p. 12) as referred to at point 5 cl of Annex XI to the EEA Agreement and as adapted to the Agreement by Protocol 1 (“the Framework Directive”).

<sup>2</sup> Corresponding to market 1 of the EFTA Surveillance Authority Recommendation of 11 May 2016 on relevant product and service markets within the electronic communications sector susceptible to *ex ante* regulation in accordance with the Act referred to at point 5cl of Annex XI to the EEA Agreement (*Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communications networks and services*); adopted by Decision No 093/16/COL, publication pending, (“Recommendation on relevant markets”).

The period for consultation with the Authority and the national regulatory authorities (“NRAs”) in the EEA States pursuant to Article 7 of the Framework Directive expires on 22 December 2016.

Pursuant to Article 7(3) of the Framework Directive, the Authority and the EEA NRAs may make comments on notified draft measures to the NRA concerned.

## **II. Description of the draft measure**

### **II.1. Background**

The PTA’s second review of the wholesale market for call termination in public telephone networks provided at a fixed location in Iceland was notified to and assessed by the Authority under Case No. 72796.<sup>3</sup>

The market for call termination in fixed networks included the termination of a call and the choice of route at the termination end of a call. Termination was defined as transit of a call from the preceding stage in the routing of the call (origination or transit) through a telephone exchange and by way of a local copper loop to the party being called. Calls between networks or calls entirely within the same network were included in the relevant market.

The relevant geographic market was defined as Iceland.

In its Decision No. 36/2012, the PTA designated the following operators as having significant market power (“SMP”) in call termination provided at a fixed location within their respective networks: Siminn hf. (“Siminn”), Fjaraskipti ehf (“Vodafone”), Nova ehf. (“Nova”), Símafélagið ehf. (“Símafélagið”) and Hringdu ehf. (“Hringdu”) and imposed obligations concerning access, non-discrimination, transparency and price controls on all SMP operators. In addition, an obligation to publish a reference offer was imposed on Siminn, and an obligation of accounting separation was imposed on Siminn and Vodafone.

The price control obligation consisted of symmetrical fixed termination rates (“FTRs”) based on the benchmarking methodology applying the following criteria:

- the FTRs would be decided on an annual basis and completed by 1 November in the year preceding its applicability;<sup>4</sup>
- only the FTRs decided by EEA NRAs on the basis of the pure Long-Run Incremental Cost (“LRIC”) methodology and that were available at the time when the PTA carried out the benchmarking exercise were to be taken into consideration;
- the comparison would be made with the price for single transit and with the price per minute of a three-minute call;
- the comparison would be made using the average exchange rate in the relevant quarter; and

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<sup>3</sup> See the Authority’s no comments letter dated 6 December 2012 (Doc No. 654378).

<sup>4</sup> The PTA did not consider it possible to have the benchmarked FTRs enter into force on 1 January 2013, because at the time of the notification none of the EEA States fulfilled the proposed criteria. In the proposed measure, the PTA required a minimum of five countries for comparison and expected this to be met in the near future. Accordingly, it was foreseen that the PTA’s first benchmarking exercise should be completed no later than 1 May 2013 and then annually as from 1 November 2013.

- the resulting price would not be higher than the average in those countries that fulfil the above conditions during the period of reference.

## II.2. Market definition

In the present draft measure, and similar to its second market review<sup>5</sup>, the PTA defines the relevant product market as comprising the part of a call which is neither categorised as origination nor transit. The service considered to be part of the relevant market is the termination of a call and the choice of route at the termination end of a call. Termination is defined as transit of a call from the preceding stage in the routing of the call (origination or transit) through a telephone exchange and by way of a local loop or by any kind of fixed line connection from a network connection point to the party being called. Calls between networks or calls entirely within the same network are considered part of the relevant market. Various service items offered on a wholesale basis in connection with the call termination and that are necessary to enable interconnection between networks are also considered part of the relevant market.

The PTA defines the relevant geographic market as Iceland.

## II.3. Finding of significant market power

On the basis of its market analysis, the PTA proposes to designate the six companies that offer call termination in their fixed line networks as individually having SMP within their networks. Accordingly, the PTA proposes to designate Siminn, Vodafone, Nova, Símafélagið, Hringdu and Tismi BV (“Tismi”)<sup>6</sup> as having SMP.

The main criteria considered by the PTA when reaching this conclusion on SMP designation include: the market shares (each provider has a 100% market share on its respective network), barriers to entry and potential competition (including the technical inability to terminate a call to another fixed termination point at least within the coming years) and an absence of, or low, countervailing buyer power.

## II.4. Regulatory remedies

The PTA proposes to continue to impose the following obligations on all SMP operators:

- access/interconnection;
- non-discrimination;
- transparency; and
- price control.

As regards the price control obligation, the PTA proposes to continue setting a maximum price (i.e. FTR) for call termination based on the benchmarking methodology applying the following criteria:

<sup>5</sup> The PTA observes that the market definition complies with the Recommendation on relevant markets and notes that the 2016 revision of the Recommendation on relevant markets has not introduced any fundamental change as regards the definition of the wholesale market for fixed call termination compared to the Recommendation on relevant markets in force when the PTA carried out its previous review of this market.

<sup>6</sup> Tismi is a new company which has made an interconnection agreement and has been allocated numbers.

- the FTRs shall be decided on an annual basis and will come into force as from 1 January each year;
- the PTA shall publish the FTRs no later than 1 November in the year preceding their applicability<sup>7</sup>;
- only the FTRs decided by EEA NRAs on the basis of the pure Bottom Up Long-Run Incremental Cost (“BU-LRIC”) methodology, which are available on 30 April of the year when the benchmarking exercise is carried out in each instance and for which a formal decision has been taken by the relevant NRA, are to be taken into consideration;
- the reference shall be for single transit prices (layer 2)<sup>8</sup>;
- the reference shall be the price per minute of a three-minute call<sup>9</sup>;
- the average exchange rate in the relevant quarter shall be used; and
- the resulting price shall not be higher than the average in those countries that fulfil the above conditions.

The PTA considers that its continued use of the benchmarking methodology is consistent with the Authority’s Termination Rates Recommendation<sup>10</sup> and refers to Article 12 of the Recommendation which foresees that, under certain conditions, NRAs may continue to use an alternative methodology, instead of the recommended BU-LRIC methodology, up until the review of the Authority’s Termination Rates Recommendation.

The PTA takes the view that for a small NRA such as the PTA which does not have sufficient budget, staff or specialised knowledge, it would be disproportionate to implement the BU-LRIC methodology.<sup>11</sup>

Finally, the PTA proposes to withdraw (from 31 December 2017) the obligation to publish a reference offer that it imposed on Siminn in its Decision No. 36/2012 and also the obligation for accounting separation imposed on Siminn and Vodafone in the same Decision. The PTA notes that it makes the maximum FTRs public and it thus considers the transparency obligation imposed on all SMP operators sufficient. This requires that information related to interconnection (e.g. FTRs, prices for all related services, all measurement units on which invoicing is based, charging periods, potential discount possibilities, as well as information regarding the location and technical characteristics of interconnection points) is made available to the PTA and to parties that request interconnection agreements. As regards the withdrawal of the accounting separation obligation, the PTA notes that since FTRs are no longer decided on the basis of costs, but

<sup>7</sup> The PTA commits to submit the draft measures to a national consultation as well as to a consultation with the Authority.

<sup>8</sup> The PTA notes that this criterion does not exclude decisions from NRAs which apply a single price to more than one layer provided that the price control obligation applies to single transit calls (layer 2). In response to the Authority’s request for information, the PTA has indicated that the use of the single transit rate is due to a low number of network interconnection points in Iceland implying that interconnection takes place at the regional level only (*i.e.* single transit).

<sup>9</sup> The PTA assumes that an average telephone call is three minutes. The calculation is made as follows: average per minute price for call termination = connection charge/3 + price per minute.

<sup>10</sup> EFTA Surveillance Authority Recommendation of 13 April 2011 on the Regulatory Treatment of Fixed and Mobile Termination Rates in the EFTA States, OJ C 340, 8.11.2012, p. 5 (“Termination Rates Recommendation”).

<sup>11</sup> The PTA indicates that, based on experience from other EEA NRAs, the costs of implementing the BU-LRIC methodology would amount to tens of millions of ISK for each model, and the modelling costs are expected to amount to several times the annual budget for outsourced consultancy services available to the PTA as a whole. In addition, the PTA notes that under the currently applicable regulatory framework the PTA does not have the possibility of getting assistance from BEREC to overcome the limitation of the PTA’s resources.

by way of benchmarking, there is no longer any need to be able to match costs with specific services.

### III. Comments

The Authority has examined the notified draft measure and has the following comment:

#### **Notification of the price control obligation and development of the BU-LRIC model**

The Authority notes the PTA's commitment to subject its annual FTR benchmarking decisions, to be applied from 1 January of each year, to a national public consultation and to the notification procedure foreseen in Article 7(3) of the Framework Directive.

In relation to the PTA's continued use of the benchmarking methodology, the Authority notes that the application of such an alternative approach is currently only foreseen up to the date for review of the Termination Rates Recommendation. Pursuant to Article 13 of the Termination Rates Recommendation, its review is foreseen in line with any future changes to the European Commission's Termination Rates Recommendation<sup>12</sup>. It is observed that the date for review of the latter Recommendation is the 31 December 2016.

Against this background, the Authority notes that the benchmarking methodology is an exception to the recommended BU-LRIC methodology and that it may only exist as long as the current Termination Rates Recommendation is in force.

### IV. Final remarks

On a procedural note, the Authority recalls that any future amendments to, or more detailed implementation of, the draft remedies consulted on in the current notification will require re-notification in accordance with Article 7(3) of the Framework Directive.

Pursuant to Article 7(5) of the Framework Directive, the PTA shall take the utmost account of comments of other regulatory authorities and the Authority. It may adopt the resulting draft measure and, when it does so, shall communicate it to the Authority.

The Authority's position on the current notification is without prejudice to any position the Authority may take in respect of other notified draft measures.

Pursuant to Point 15 of the Procedural Recommendation,<sup>13</sup> the Authority will publish this document on its eCOM Online Notification Registry. The Authority does not consider the information contained herein to be confidential. You are invited to inform the Authority within three working days<sup>14</sup> following receipt of this letter if you consider, in accordance

<sup>12</sup> Commission Recommendation of 7 May 2009 on the Regulatory Treatment of Fixed and Mobile Termination Rates in the EU, 2009/396/EC, (OJ L 124, 20.5.2009, p. 67–74).

<sup>13</sup> EFTA Surveillance Authority Recommendation of 2 December 2009 on notifications, time limits and consultations provided for in Article 7 of the Act referred to at point 5cl of Annex XI to the Agreement on the European Economic Area (Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communications networks and services), as adapted by Protocol 1 thereto, OJ C 302, 13.10.2011, p. 12, and available on the Authority's website at <http://www.eftasurv.int/media/internal-market/recommendation.pdf> ("the Procedural Recommendation").

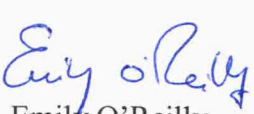
<sup>14</sup> The request should be submitted through the eCOM Registry, marked for the attention of the eCOM Task Force.

with EEA and national rules on confidentiality, that this letter contains confidential information which you wish to have deleted prior to publication. You should give reasons for any such request.

Yours sincerely,



Lennart Johanson  
Acting Director  
Internal Market Affairs Directorate



Emily O'Reilly  
Deputy Director for Competition  
Competition and State Aid Directorate